

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 12, 2007

D043099 O'Meara v. Palomar-Pomerado Health System et al.

Order affirmed. The parties to bear their own costs on appeal. Haller, J; We Concur: Nares, Acting P.J., Irion, J.

D048256 People v. Ringold

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D049353 People v. Gonzalez

The judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., Haller, J.

D047982 Victoria Place, LLC v. Jun et al.

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D049502 In re E.D., a Juvenile

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D050376 In re Duby on Habeas Corpus

The petition is denied without prejudice to refilling in San Diego Superior Court.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D048795 In re Harmonie R. et al., Juveniles

Cause called on merits. Maryann Marisa Milcetic, Esq. argued for appellant, Gregory R. Konrad Lee, Esq. argued for appellant, Julia R. Julie E. Braden, Esq. argued for appellant, Salvador R. Gary Seiser, Deputy County Counsel argued for respondent. Carl Fabian, Esq. argued for the minors. Ms. Milcetic replied. Cause submitted.

Court recessed at 9:29 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D047420 People v. Diaz

Cause called on merits. Daniel J. Kessler, Esq. argued for appellant. James, Flaherty, Deputy Attorney General argued for respondent. Mr. Kessler replied. Cause submitted.

D048405 AEA Insurance Company LTD., et al. v. Garamendi

Cause called on merits. Raul Valadez Aguilar, Esq. argued for appellant. Leslie Smith, Deputy Attorney General argued for respondent. Mr. Aguilar replied. Cause submitted.

D048656 Michelotti v. Parker

Cause called on merits. Joshua Parker, argued for appellant in pro per. Clark Lanier Davidson, Esq. argued for respondent, Mr. Parker replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

Clerk: D. Moore

D048075 Sidock v. City of Chula Vista

Cause called on merits. James A. Mangione, Esq. argued for appellant. Charlie Bird, Esq. argued for respondent. Mr. Mangione replied. Cause submitted.

Court recessed at 2:00 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D047607 People v. Scharf

Cause called on merits. Robert L. Swain, Esq. argued for appellant. Wade Poulson, Certified Law Student argued for respondent. Mr. Swain replied. Cause submitted.

D048919 Kolender v. Gant

Cause called on merits. Fern Steiner, Esq. was present in oral argument for real party in interest/appellant, and submitted on the briefs. Sanford A. Toyen, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D047950 Hasslinger v. Martin

Cause called on merits. Dennis B. Atchley, Esq. argued for appellant. Joseph G. Maiorano, Esq. argued for respondent. Mr. Atchley replied. Cause submitted.

D047469 Csaszi v. Punaro

Cause called on merits. Raymond D. Kitlas, Esq. argued for appellant. Jeffrey Dean Farrow, Esq. argued for respondent. Mr. Kitlas replied. Cause submitted.

Court recessed at 3:13 p.m. until Tuesday, March 14, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 13, 2007

D049779 In re Andrew M., a Juvenile

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

D048629 In re Marco R., a Minor

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Haller, J.

D050012 Gene L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. The request for a stay is denied. McDonald, J.; We Concur: Nares, Acting P.J., Aaron, J.

D049145 In re Eugenea W., a Juvenile

The judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

D047460 People v. Abujawdeh

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D048813 In re Abujawdeh on Habeas Corpus

The petition is denied.

D048284 In re Marriage of Galvan

The trial court's November 7, 2005 order is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D050345 In re Lopez on Habeas Corpus

The petition is denied.

D049836 Lasco Bathware, Inc. v. Superior Court of San Diego County/Evans et al.

The petition is denied.

D048963 Aquila, Inc. v. Superior Court of San Diego County/City and County of San Francisco et al.

CERTIFIED FOR PUBLICATION. Let a peremptory writ of mandate issue requiring the trial court to vacate its order denying the motion of Aquila to quash services of summons and to enter a new order granting the motion. Petitioner is awarded its costs incurred in this original proceeding. Huffman, J.; We Concur: McConnell, P.J.; Benke, J.

D049600 People v. Knox

The sentence is reversed and the case remanded to the superior court to conduct a new sentencing hearing consistent with the views expressed in Cunningham, supra, 549 U.S.____[2007 WL 135687]. In all other respects, the judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 13, 2007 (Continued)

D049591 People v. Lopez

The order is affirmed. Haller, J.; We Concur: McConnell, P.J., Aaron, J.

D048591 Conservatorship of the Person of Amanda B.

The judgment of the trial court is reversed insofar as it designates that the least restrictive alternative placement for Amanda is a locked facility *or* a board and care facility. The matter is remanded to the trial court to designate a single level of placement that represents the least restrictive alternative placement available and necessary to achieve the purpose of treatment for Amanda. In all other respects the judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D048002 Flores et al. v. Evergreen at San Diego, LLC

The order is affirmed. Evergreen to pay the Floreses' costs on appeal. CERTIFIED FOR PUBLICATION. Haller, J.; We Concur: McConnell, P.J., McIntyre, J.

D049531 In re J.F. et al., Juveniles

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting P.J., Huffman, J.

D050431 People v. Yeager

The petition is denied.

D049759 In re Martinez on Habeas Corpus

The Petition is denied.

D049588 People v. Cruz

The petition for rehearing is denied.

D050343 Bleye v. Superior Court of San Diego County/People

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion
Clerk: D. Moore

D047870 Hardage Hotels I, LLC v. Criimi Mae Services L.P.

Cause called on merits. Jeff G. Harmeyer, Esq. argued for appellant. Gregory Cross, Esq. argued for respondent. Mr. Harmeyer replied. Cause submitted.

D407897 Brunner v. Daimlerchrysler Corporation

Cause called on merits. Thomas A. Scutti, Esq. argued for appellant. Scott M. Cohen, Esq. argued for respondent. Mr. Scutti replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 13, 2007 (Continued)

D048211 Poway Royal Mobilehome Owners Association et al. v. Poway Redevelopment Agency et al.

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Thomas Clark, Esq. argued for respondent. Mr. Mitchell replied. Cause submitted.

Court recessed at 10:16 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Cynthia Aaron
Clerk: D. Moore

D049033 Conservatorship of Tian L.

Cause called on merits. Christopher Blake, Esq. argued for appellant. Leonard Pollard, Deputy County Counsel argued for respondent. Mr. Blake replied. Cause submitted.

Court recessed at 1:59 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Joan Irion

D047175 People v. Romero

Cause called on merits. John L. Staley, Esq. argued for appellant. Quisteen Shum, Deputy Attorney General argued for respondent. Mr. Staley replied. Cause submitted.

D048804 People v. Sanner

Cause called on merits. George L. Schraer, Esq. argued for appellant. Donald Ostertag, Certified Law Student, argued for respondent. Mr. Schraer replied. Cause submitted.

D044577 Gordon v. Kolod Wager Law Offices et al.

Cause called on merits. Anthony T. Ditty, Esq. argued for respondent/cross-appellant. Scott Kolod, Esq. argued for appellant/cross-respondent. Cause submitted.

D048181 Seastrom et al. v. Neways Inc., et al.

Cause called on merits. Darren J. Quinn, Esq. argued for appellant. Frederick Friedman, Esq. argued for respondent. Mr. Quinn replied. Cause submitted.

D046833) Carter v. Escondido Union High School District

D047649) Carter v. Escondido Union High School District

Cause called on merits. Paul Carelli, Esq. argued for appellant/cross-respondent. Jeffery A. Morris, Esq. argued on the cross-appeal. Jon R. Williams, Esq. argued for respondent/cross-appellant. John Morris, Esq. was present in oral argument for respondent/cross appellant, but did not argue. Mr. Carelli replied. Mr. Williams replied on cross-appeal. Cause submitted.

Court recessed at 3:56 p.m. until Wednesday, March 14, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 13, 2007 (Continued)

**D050181 The City of San Diego v. Superior Court of San Diego County/San Diego City
Employees Retirement System et al.**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 14, 2007

D047900 People v. Young

The conviction and sentence are affirmed but for: (1) denial of good time credit for the period May 4 through June 8, 2005; (2) imposition of the \$600 restitution fine, and (3) imposition of the probation revocation restitution fine. The matter is remanded for determination whether Young's conduct while in custody between May 4 and June 8, 2005, entitled him to good time credit for this period; modification of the sentence to order Young to pay a \$200 restitution fine instead of a \$600 restitution fine; and deletion of the probation revocation restitution fine. Benke, Acting P.J.; We Concur: Haller, J., Aaron, J.

D049018 People v. Higgins

All proceedings in this cause have permanently abated by reason of appellant's death. The Superior Court is directed to enter its order to that effect in the record. There no longer being an appellate objective, the appeal is dismissed.

D048074 Houlihan as Trustee etc. et al. v. Evans

The petition for rehearing is denied.

D049756 In re Gregory A., a Juvenile

The judgment terminating parental rights is reversed. This case is remanded to the juvenile court, with directions to order the Agency to give proper ICWA notice to any applicable tribes and the BIA. If, after proper notice, no tribe seeks to intervene or otherwise indicates Gregory, Jr., is an Indian child, the court shall reinstate the judgment. The remittitur is to issue forthwith. Haller, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D047380 Miramar Truck and Auto Center Inc., et al. v. General Motors Corporation et al.

The judgment of dismissal is modified by the addition to the beginning of its paragraph 2 the following language: "In light of the above-referenced dismissal request and the substantive rulings on demurrers, the ninth cause of action is deemed to be dismissed with prejudice and [Plaintiffs shall take nothing ...]." Upon remand, the superior court is directed to prepare and enter a modified judgment utilizing that language; as so modified, the judgment is affirmed. Costs are awarded to respondents. Huffman, Acting P.J.; I Concur: Nares, J. I Dissent: Irion, J.(by opinion)

D049909 Great Western Park & Playground, Inc. v. Superior Court of San Diego County/Ladeveze

The petition is denied.

D050456 In re Diparra on Habeas Corpus

The denial of a petition for writ of habeas corpus is not appealable. The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 14, 2007 (Continued)

D050231 In re Marriage of Rodriguez

Pursuant to California Rules of Court, rule 8.140, the appeal filed January 31, 2007, is dismissed for appellant's failure to timely designate the record.

D047631 People v. Thigpenn

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D047317 McWethy v. Elansari et al

Orders affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D049797 Flanders Precisionaire v. Workers' Compensation Appeals Board/Safeco Insurance et al.

The petition is denied.

D048049 Bacher v. Bacher

D047913 Bacher v. Bacher

(Consolidated) The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald
Clerk: D. Moore

D048414 Diamond Environmental Services, LLC v. Valenta et al.

Cause called on merits. Bruno William Katz, Esq. argued for appellant., Valenta. Lewis Merrill Wolensky, Esq. argued for respondent. Mr. Katz replied. Cause submitted.

D048658 Marcey v. Romero

Cause called on merits. Robert L. Kenny, Esq. argued for appellant. Nicholas J. Pagnotta, Esq. argued for respondent. Mr. Kenny replied. Cause submitted.

Court recessed at 9:44 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D047328 People v. Huhn

Cause called on merits. Lynda A. Romero, Esq. argued for appellant. Jeffrey J. Koch, Deputy Attorney General argued for respondent. Ms. Romero replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 14, 2007 (Continued)

D046015 Su v. Plaza del Sol, LLC et al.

Cause called on merits. Jason Litt, Esq. argued for appellant/cross-respondent. Robert G. Dyer, Esq. argued for respondent/cross-appellant. Mr. Litt replied. Mr. Dyer replied. Cause submitted.

Court recessed at 10:46 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D049021 White v. Caudill

Cause called on merits. Samuel Lee Hart, Esq. argued for appellant. Roland H. Achtel, Esq. argued for respondent. Mr. Hart replied. Cause submitted.

D048432 Francisco L., a Minor etc.

Cause called on merits. Donald James Loftus, Esq. argued for appellant. Clark R. Hudson, Esq. argued for respondent. Mr. Loftus replied. Cause submitted.

D047993 People v. Weaver

D049498 In re Weaver on Habeas Corpus

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant, and submitted additional authorities. James Dutton, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted on appeal, only, D047993.

D048373 Valentine v. Flowers et al.

Cause called on merits. Ross T. Elliott, Esq. argued for appellant. Richard J. Scuba, Esq. argued for respondent. Mr. Elliott replied. Cause submitted.

Court recessed at 3:30 p.m. until Thursday, March 15, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 15, 2007

D048909 People v. Garner

Judgment affirmed. Haller, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D049143 In re Ricky R., a Juvenile

The order is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Irion, J.

D049147 People v. Ballard

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D049142 In re Michael D., a Juvenile

The juvenile court orders are affirmed. Irion J.; We Concur: Nares, Acting P.J., Haller, J.

D049071 In re Gabriel B., a Juvenile

The judgment is affirmed.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D049586 People v. Govan

Cause called on merits. Mark Devore, Esq. argued for appellant. Robin Derman, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D049427 Allstate Insurance Company v. Superior Court/Delanzo-RPI

D049430 21st Century Insurance Company v. Superior Court/Quintana-RPI

D049446 Allstate Indemnity Company v. Superior Court/Collins-RPI

D049675 Wawanesa General Insurance Company v. Superior Court/Aimaq-RPI

**D049831 Interinsurance Exchange of the Automobile Club v. Superior Court/
Montpetit-RPI**

Matter called on merits. John Tinley Brooks, Esq. argued for petitioner, Allstate Indemnity Company. Scott D. Schabacker, Esq. argued for petitioner, Wawanesa General Insurance Company. Robert S. Gerstein, Esq. argued for real party in interest. James Kostas, Esq. was present in oral argument, but did not argue. Sheldon A. Ostroff, Esq. argued for real party in interest. Mr. Brooks replied. Mr. Schabacker replied. Matter to be submitted at a later date.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 15, 2007 (Continued)

Court recessed at 11:09 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald
Clerk: D. Moore

D049257 Interinsurance Exchange of the Automobile Club v. Superior Court/Williams-RPI

Matter called on merits. John Brooks, Esq. argued for petitioner. Peter H. Klee, Esq. was present in oral argument for petitioner, but did not argue. Timothy Blood, Esq. argued for respondent. Kevin Green, Esq. was present in oral argument for respondent, but did not argue. Mr. Brooks replied. Matter submitted.

Court recessed at 2:19 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justice Alex McDonald and Cynthia Aaron

D047660 Weiss et al. v. Interinsurance Exchange of the Automobile Club

Cause called on merits. Robert H. Roe, Esq. argued for appellant. Stephen Eric Smith, Esq. argued for respondent. Mr. Roe replied. Cause submitted.

Court recessed at 3:05 p.m. until Friday, March 16, 2007 at 9:00 a.m.

D049776 In re Ibanez on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 16, 2007

D046617 Ohton v. Board of Trustees of the California State University et al.

The judgment is reversed and remanded. The trial court shall give Ohton an opportunity to seek leave to amend to add a petition for writ of mandate and decide all issues arising from the same.
CERTIFIED FOR PUBLICATION O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.

D048795 In re H.R., a Juvenile

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D> Moore

D049614 Hesperia Citizens for Responsible Development v. City of Hesperia et al.

Cause called on merits. C. Robert Ferguson, Esq. argued for appellant. William A. Hauck, Esq. argued for respondent, City of Hesperia. Mr. Ferguson replied. Cause submitted.

Court adjourned at 9:25 a.m.

D050485 Kleenhouse Building Maintenance, Inc. v. Superior Court of San Diego County/Taylor et al.

The petition is denied.

D049827 In re Swimmer on Habeas Corpus

The petition is denied.

D050475 In re Bass on Habeas Corpus

The application is denied.